

LM 8577

OFFICE OF COMMISSIONER RACHELLE B. CHONG

Federal Communications Commission

1919 M Street, N.W., Room 844

Washington, D.C. 20554

Telephone: (202) 418-2200

Fax: (202) 418-2820

April 18, 1995

RECEIVED

APR 20 1995

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Mr. Paul Liu
Senior Planner, Planning and
Community Development
P.O. Box 217
220 Magnolia Avenue
Ceres, California 95307

DOCKET FILE COPY ORIGINAL

Re: Cellular Telecommunications Industry Association's Petition to
Preempt State and Local Zoning Regulations

Dear Mr. Liu:

Thank you very much for your letter about the petition filed by the Cellular Telecommunications Industry Association (CTIA). This petition asks the Commission to begin a rule making proceeding to preempt state and local regulation of tower siting for commercial mobile radio service providers, such as cellular and personal communications service (PCS) companies. I am very interested in this issue, and welcomed the opportunity to hear your thoughts on it.

I certainly understand your concerns about the CTIA petition and its impact on the role of local jurisdictions in the cell siting process. Traditionally, cell siting issues are handled at the local level. By and large, this situation has been appropriate, given that zoning and land use issues involve uniquely local concerns, such as aesthetics and compliance with local building codes or other health and safety codes. I believe local authorities should continue to play a key role in these decisions.

However, as the demand for sites for wireless carriers continues to mushroom, I am also concerned about the ability of wireless providers to build out their networks without undue delay. There are many benefits to having national or regional wireless communications systems -- emergency communication abilities are enhanced, and people use wireless communications to become more efficient and productive. Further, new PCS licensees are paying the U.S. treasury billions of dollars for their licenses, which are regional and national in nature. I think it's fair for the federal government to ensure that these licensees are able to build their facilities throughout their service areas in a timely fashion. Moreover, some carriers complain that some localities may like to put a moratorium on all wireless cell sites in

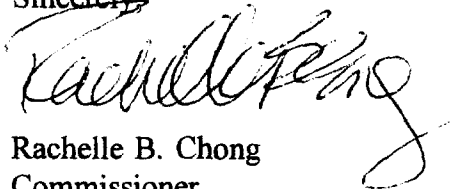
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certain geographic areas. For this reason, I believe the Commission also has an important role to play in this area to ensure ubiquitous and broad coverage without undue delay.

Having said that, I have not yet made any decisions about the CTIA petition. I believe that the Commission must balance the federal interest in ensuring the development of a competitive, efficient mobile services infrastructure against the legitimate interests of local governments in regulating zoning and land use matters. I am open to considering all options available to the Commission to strike the appropriate balance, and hope that you will work with us to find an acceptable solution for both our concerns.

I appreciate your taking the time to share your concerns with me. I will certainly keep them in mind as we consider the CTIA petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachelle B. Chong", written over the printed name.

Rachelle B. Chong
Commissioner



PLANNING AND
COMMUNITY DEVELOPMENT
P O BOX 217
2220 MAGNOLIA AVENUE
CERES, CA 95307
(209) 538-5774
FAX (209) 538-5780

CITY COUNCIL
Barbara Hinton, Mayor
Blair R. Bradley Jeffrey D. McKay
Leo D. Havener, Jr. Stan Risen

March 13, 1995

Rachell Chong
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20036

RE: Proposal to "preempt state and local governments from enforcing zoning and other similar regulations".

Dear Ms. Chong:

We have received the attached notice about a proposal to preempt state or local government from enforcing zoning and other similar regulations regarding locating and constructing new towers for wireless communication facilities. The City of Ceres does not support this proposal.

Sincerely,

Paul Liu,
Senior Planner

PL/dj

Attachment

cc: Gary Napper, City Manager

#2letters/tower.doc

PUBLIC UTILITIES COMMISSION

550 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 24, 1995

IMPORTANT NOTICE

**The Ultimate Jurisdiction for Planning/Land Use Decisions on
Siting and Relocating Cellular and Other Wireless Communications
Towers and Transmitters Could be Transferred to Washington -- to the FCC**

We are notifying you about a proposal to "*preempt state and local governments from enforcing zoning and other similar regulations*" with respect to locating and constructing new towers for wireless communications facilities.

Currently, the California Public Utilities Commission (CPUC) issues authority for cellular utilities to construct, install and modify facilities, but only after ensuring that the cellular utilities have first obtained the necessary local permits or approvals -- a way to assure that local community issues have been fully weighed. We try hard to get cellular utilities to abide by local community requirements. Recently, the CPUC settled an investigation of approximately 160 sites of Los Angeles Cellular Telephone Company (LACTC) for \$4.2 million. Additionally, LACTC settled an investigation into three sites for approximately \$725,000 for misrepresentation to the CPUC, premature construction, and permitting deficiencies. GTE Mobilenet was also recently fined \$343,000 for cellular siting violations.

However, an organization representing cellular utilities is petitioning the Federal Communications Commission (FCC) to preempt the CPUC and local government functions like your department's. Moving jurisdiction to Washington is not empowering the states, and it puts local community issues before decision makers located thousands of miles away. The assumption is that communities must routinely deny permits, but I know of no such instances. Local community land use considerations accommodate the placement of towers and transmitters, and wireless service has been extended to consumers. It is important for local communities to know about this if they are to have a voice in what happens. Enclosed are some details.

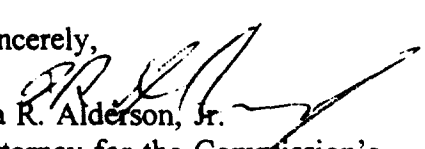
You should, if you've views to express, do several things, including:

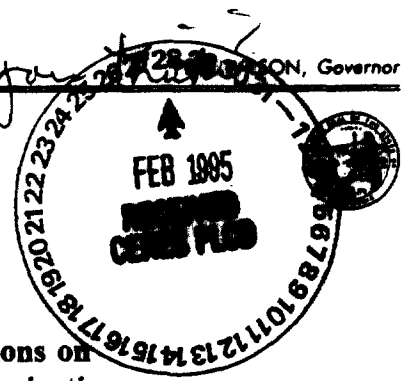
1. Contact members of the California Congressional delegation;
2. Write to the FCC Commissioners [Commissioner Rachelle Chong is from the Stockton Area]; and
3. File a formal response or pleading with the FCC.

As you may know, the CPUC is holding informal workshops (next workshop in San Francisco on March 6, 1995) on whether the CPUC should basically "give back" its oversight so local communities and courts would have ultimate jurisdiction, and just as that dialog was starting (albeit without much participation by counties and cities), the cellular utilities initiated the proposal to sidestep local requirements and seek FCC preemption-- they seek to trade-off local community and state review for a scheme to give themselves maximum flexibility and move any challenges to a forum thousands of miles away.

For more details, call Mr. DeUlloa (415-703-1998) or Ms. Youngsmith (703-2088).

Sincerely,


Ira R. Alderson, Jr.
Attorney for the Commission's
Safety and Enforcement Division
Attachments:



SUMMARY REPRINT FROM

Cellular Telecommunications Industry Association's Petition for Rule Making

In the Matter of)
)
Amendment of the Commission's) RM -8577
Rules To Preempt State and Local)
Commercial Mobile Services)
Providers)

To: The Commission

**Cellular Telecommunications Industry Association's
Petition for Rule Making**

The Cellular Telecommunications Industry Association ("CTIA"), pursuant to § 1.401 of the Commission's rules, hereby submits a Petition for Rule Making ("petition") requesting the Commission to issue a Notice of Proposed Rule Making proposing to exercise its authority under § 2(b) and § 332 of the Communications Act of 1934, as amended, ("Act"), to *preempt state and local governments from enforcing zoning and other similar regulations* which have the purpose or effect of barring or impeding commercial mobile radio service ("CMRS") providers from locating and constructing new towers.

To fully realize the increased opportunities for new output and increased consumer choice emanating from the historic auctioning of PCS spectrum, the Commission, consistent with congressional mandate and its own policies, must prohibit states from thwarting such developments. Preemption of CMRS tower site regulations is required to ensure the availability of an ubiquitous, competitive, efficient, federally-regulated mobile services infrastructure consistent with the public interest. In the absence of preemption, the Commission guarantees additional delay and added costs in the rollout of PCS and other mobile services as 38,000 different local jurisdictions limit, condition and otherwise interfere with the build out of CMRS facilities. (Cellular Telecommunications Industry Association's Petition for Rule Making, pp 1-2.) (emphasis added)

YOU MAY WRITE the FCC Commissioners at:

Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20036
(202) 418-0200

The five Commissioners are:

Chairman Reed Hundt, Rachelle Chong, James Cuello, Susan Ness and Andrew Barrett

For information on how to file a formal reply contact the office of:

William Canton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20036
(202) 418-0300



PUBLIC NOTICE

Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

News media information 202/632-5050. Recorded listing of releases and texts 202/632-0002.

51679

REPORT NO. 2052

January 18, 1995

OFFICE OF PUBLIC AFFAIRS
PUBLIC INFORMATION AND REFERENCE SERVICES
PETITIONS FOR RULEMAKING FILED

(Interested persons may file statements opposing or supporting the Petitions for Rulemaking listed herein within 30 days. See Section 1.4 and 1.405 of the Commission's rules for further information).

RM No.	Rules Sec.	Petitioner	Date Rec'd	Nature of Petition
8577	333 and 2(b)	Cellular Telecommunica- tions Industry Associations Micahel F. Altschul, Vice President, General Counsel Randall S. Coleman, Vice President for Regulatory Policy and Law 1250 Connecticut Avenue N.W. Suite 200 Washington, D. C. 20036)	12-22-94	Request Amendment of Commission's Rules to Preempt State and Local Regulation of Tower Siting for Commercial Mobile Services and Providers.